Supreme Court, U.S.
FILED

No. 94-1856 MAY 10 1995

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

JOSEPH CANDELA,

Petitioner,

—against—

DARRYL J. WOODS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DENNIS C. VACCO
Attorney General of the
State of New York
Attorney for Petitioner
120 Broadway
New York, New York 10271
(212) 416-8657

VICTORIA A. GRAFFEO
Solicitor General

LILLIAN Z. COHEN*
FREDERIC L. LIEBERMAN
Assistant Attorneys General

Of Counsel

* Counsel of Record

38 pp

QUESTION PRESENTED

Whether the exception recognized by this Court in *Heck v. Humphrey*, 512 U.S. ___, 114 S. Ct. 2364 (1994), for section 1983 actions for damages based on the Fourth Amendment, controls the accrual of all such claims, without requiring invalidation of the conviction, or permits the district court to determine, on a case-by-case basis, whether the claims necessarily demonstrate the invalidity of the plaintiff's conviction, thereby postponing the commencement of the limitation period until such time as the conviction is reversed.

LIST OF PARTIES

The names of all of the parties in the court of appeals appear in the caption of the case.

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	5
THE SECOND CIRCUIT'S DECISION IS IN CONFLICT WITH THE PRINCIPLES ENUNCIATED BY THIS COURT IN *HECK*	5
CONCLUSION	9

TABLE OF AUTHORITIES

Cases	PAGE
Board of Regents v. Tomanio, 446 U.S. 478 (1980)....	2
Deary v. Three Un-named Police Officers, 746 F.2d 185 (3d Cir. 1984)	6
Hackenburg v. Zukowski, 754 F. Supp. 409 (M.D. Pa. 1991)	7
Heck v. Humphrey, 512 U.S. ___, 114 S. Ct. 2364 (1994)	i, 4, 7
Johnson v. Johnson County Commission Board, 925 F.2d 1299 (10th Cir. 1991).....	6
King v. New York Telephone Co., Inc., 785 F.2d 31 (2d Cir. 1986)	6
Mack v. Varelas, 835 F.2d 995 (2d Cir. 1987)	3
McCune v. City of Grand Rapids, 842 F.2d 903 (6th Cir. 1988)	6
Morse v. University of Vermont, 973 F.2d 122 (2d Cir. 1992)	6
Pauk v. Board of Trustees, 654 F.2d 856 (2d Cir. 1981), *cert. denied*, 455 U.S. 1000 (1982)	6
People v. Woods, 189 A.D.2d 838, 592 N.Y.S.2d 748 (2d Dep't 1993)	2
United States v. Kubrick, 444 U.S. 111 (1979)	6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

No. _____

JOSEPH CANDELA,

Petitioner,

—against—

DARRYL J. WOODS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the court of appeals on remand from this Court is reported at 47 F.3d 545 (2d Cir. 1995) and is reproduced in the appendix at 1a.[1] The initial opinion of the court of appeals is reported at 13 F.3d 574 (2d Cir. 1994) and is reproduced in the appendix at 4a. The opinion and order of the district court are reported at 825 F. Supp. 43 (S.D.N.Y. 1993) and are reproduced in the appendix at 11a.

[1] Page references to the Appendix are shown by "(__a").

JURISDICTION

The judgment of the court of appeals was entered February 9, 1995. This court has jurisdiction to hear this petition pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

This petition raises the question of whether this Court's decision in *Heck* permits the displacement, on a case-by-case basis, of the policies of repose which underlie statutes of limitation, and their related rules of accrual and tolling, for some Fourth Amendment claims, but not for others. Under the court of appeals' analysis, police officers facing a potential Fourth Amendment claim can never be certain when the applicable statute of limitations will begin to run and will have no "settled expectations", *Board of Regents v. Tomanio*, 446 U.S. 478, 487 (1980), whether such a claim is time-barred. Accordingly, this Court should give further guidance as to the appropriate construction of *Heck*.

This case began with a search and seizure of respondent's car which petitioner conducted on September 25, 1989. (11a-12a). The search led to respondent's arrest and indictment. (12a). After an unsuccessful motion to suppress both the evidence seized and statements made by respondent, respondent proceeded to trial and was convicted. *Id.* The evidence seized was introduced during the trial. *Id.*

On January 19, 1993, the judgment of conviction was reversed and the indictment dismissed. *People v. Woods*, 189 A.D.2d 838, 592 N.Y.S.2d 748 (2d Dep't 1993). The Appellate Division held that the search of respondent's car was unlawful and that statements given by him to the police were involuntary. *Id.* at 841-43, 592 N.Y.S.2d at 750-52.

On May 6, 1993, more than three years after the events which gave rise to it, respondent filed a complaint in the

United States District Court for the Southern District of New York pursuant to 42 U.S.C. § 1983. (13a). Respondent invoked the district court's jurisdiction pursuant to 28 U.S.C. § 1343, as this is an action to redress the deprivation under color of State law of rights, privileges and immunities secured by the Constitution of the United States.

In his complaint, respondent alleged, *inter alia*, that petitioner had subjected him to an unreasonable search and seizure and had arrested him without probable cause, in violation of his rights under the Fourth and Fifth Amendments to the Constitution. (13a). On June 25, 1993, the district court (Goettel, J.) granted petitioner's motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) on the ground that respondent's claims were barred by the applicable three year statute of limitations and did not fall within any applicable tolling rules. (13a-23a). *Woods v. Candela*, 825 F. Supp. 43 (S.D.N.Y. 1993).

The Court of Appeals for the Second Circuit affirmed. (4a-10a). *Woods v. Candela*, 13 F.3d 574 (2d Cir. 1994). The court noted, preliminarily, that this action is governed by New York's three year statute of limitations (6a), and held that, for purposes of applying the statute, respondent's claims accrued on September 25, 1989, the day on which all of petitioner's actions with respect to respondent took place and when respondent first knew of those actions. (7a). The court rejected respondent's contention that his claims did not accrue until his conviction was overturned, relying on its earlier decision in *Mack v. Varelas*, 835 F.2d 995 (2d Cir. 1987), in which it held that the district court should stay, rather than dismiss, a timely filed section 1983 action which could be affected by pending state court proceedings. (7a-9a).

Respondent then filed a petition for a writ of certiorari. Subsequent to the filing of the petition, this Court decided *Heck*, where the question presented was "whether a state prisoner may challenge the constitutionality of his conviction in

a suit for damages under 42 U.S.C. § 1983." 114 S. Ct. at 2368. The Court concluded that such an action was not viable. *Id.* at 2372. In reaching this conclusion, the Court held that, as a general rule, there is no cause of action for damages under section 1983 in an action in which a judgment for the plaintiff "would necessarily imply the invalidity" of the plaintiff's conviction, *unless and until* the plaintiff can show that the conviction has been invalidated. *Id.* In so holding, the Court noted that no statute of limitations problem was presented while the plaintiff was attempting to invalidate the conviction because "the § 1983 claim has not yet arisen." *Id.* at 2374.

At the same time, this Court recognized an exception to the general rule when it concluded that where "the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit." *Heck*, 114 S. Ct. at 2372-73 (emphasis in original) (footnotes omitted). The Court gave as an example of a case falling within the exception "a suit for damages attributable to an allegedly unreasonable search. . . ." *Id.* at 2372, n.7. The Court went on to explain that "[b]ecause of doctrines like independent source and inevitable discovery, . . . , and especially harmless error, . . . , such a § 1983 action, even if successful, would not *necessarily* imply that the plaintiff's conviction was unlawful." *Id.* (emphasis in original) (citations omitted). However, the Court did not suggest that the availability of these doctrines was a prerequisite to invocation of the exception.

In October 1994, this Court granted respondent's petition, vacated the decision of the court of appeals and remanded the matter "for further consideration in light of *Heck*." *Woods v. Candela*, ___ U.S. ___, 115 S. Ct. 44 (1994).

After the submission of letter briefs, the court of appeals issued its decision on February 9, 1995, reversing the judg-

ment of the district court, holding that respondent's action was timely, and remanding the matter for further proceedings. The court concluded that respondent's claims "necessarily imply that his conviction was unlawful, and thus could not have been raised prior to the Appellate Division's reversal of his conviction." (3a). *Woods v. Candela*, 47 F.3d 546 (2d Cir. 1995) (*per curiam*).

The petition should be granted because it raises an important federal question concerning the construction of the decision in *Heck* which should be settled by this Court.

REASONS FOR GRANTING THE WRIT

THE SECOND CIRCUIT'S DECISION IS IN CONFLICT WITH THE PRINCIPLES ENUNCIATED BY THIS COURT IN *HECK*

Petitioner seeks certiorari to review the decision of the court of appeals insofar as it held that this Court's decision in *Heck* requires lower courts to utilize a case-by-case analysis and determine whether the particular Fourth Amendment claims raised by a plaintiff necessarily imply the invalidity of the underlying conviction. This decision by the court of appeals resulted in the conclusion that respondent's claim accrued only upon the invalidation of his conviction and, therefore, was timely, even though respondent knew all of the facts pertaining to his alleged "injury" and its cause at the time of the search and questioning, and lacked knowledge only as to the existence of an actionable wrong. The decision places petitioner and other police officers in an untenable position. As a result of the court of appeals' decision, some potential Fourth Amendment claims against police officers will be time-barred within a specific period running from the date of the search, while other potential Fourth Amendment claims will not be time-barred until that same period runs

from some later, and unknown, date when the underlying conviction is invalidated, if ever.[2]

Both the district court and the court of appeals in its initial opinion had concluded that respondent's cause of action for violation of his rights under the Fourth and Fifth Amendments accrued at the time of the search and questioning. (14a-15a; 7a). These decisions were based on settled authority that the statute of limitations begins to run when the claim "accrues", *King v. New York Telephone Co., Inc.*, 785 F.2d 31 (2d Cir. 1986), which date, for claims brought pursuant to 42 U.S.C. § 1983, is a matter of federal law. *Morse v. University of Vermont*, 973 F.2d 122, 125 (2d Cir. 1992). In determining the accrual date, the focus is not on a would-be plaintiff's knowledge of the legal basis for a claim, but rather on his knowledge of the facts giving rise to the claim. *United States v. Kubrick*, 444 U.S. 111, 122-25 (1979). Accordingly, a cause of action accrues when "the plaintiff 'knows or has reason to know' of the injury that is the basis of his action." *Pauk v. Board of Trustees*, 654 F.2d 856, 859 (2d Cir. 1981) (citation omitted), *cert. denied*, 455 U.S. 1000 (1982); *see also Johnson v. Johnson County Commission Board*, 925 F.2d 1299, 1301 (10th Cir. 1991); *McCune v. City of Grand Rapids*, 842 F.2d 903, 906 (6th Cir. 1988); *Deary v. Three Un-named Police Officers*, 746 F.2d 185, 193 (3d Cir. 1984).

In this case, since dismissal of the charges against respondent was not an element of any of his claims, respondent did not need to gain any further factual knowledge of petitioner's actions which might form the basis for a claim in order to commence suit. According to respondent, all of petitioner's actions with respect to the alleged unreasonable search and seizure, the alleged arrest without probable cause, and the alleged denial of respondent's right to remain silent took

---

[2] In the instant case, according to the court of appeals, the statute of limitations did not begin to run until January 1993, almost three and one-half years after the search, and the case could have been commenced as late as January 1996.

place on September 25, 1989. (11a-12a). Respondent was clearly aware of those actions, which occurred in his presence, *id.*, and which he then made the basis for his pre-trial motion to suppress (12a). Therefore, under the law as it existed at the time of the search, respondent's claims accrued in September 1989, when the search occurred. *See Hackenburg v. Zukowski*, 754 F. Supp. 409, 410-11 (M.D. Pa. 1991) (rejecting the argument that plaintiffs' "civil rights action did not accrue until the validity of the search and seizure had been adjudicated in the state court criminal proceeding").

This Court's decision in *Heck* should not be read to alter this well-settled conclusion insofar as it applies to claims for unreasonable searches and seizures. In *Heck*, 114 S. Ct. at 2372, the Court held that, in general, there is no cause of action for damages under section 1983 in an action in which a judgment for the plaintiff "would necessarily imply the invalidity" of the plaintiff's conviction, unless and until plaintiff can show that the conviction has been invalidated. However, the Court also concluded that where "the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit." *Id.* at 2372-73 (emphasis in original) (footnotes omitted). The Court gave as an example "a suit for damages attributable to an allegedly unreasonable search. . . ." *Id.* at 2372, n.7. This action by respondent, alleging violation of "his Fourth Amendment right to be free from unreasonable searches and seizures without probable cause and his Fifth Amendment right to remain silent," falls directly within that exception and, therefore, should have been dismissed.

The court below reached a contrary result by drawing a distinction between those unreasonable searches which imply the unlawfulness of the conviction and those which do not. This distinction is not supported by the decision in *Heck*. While it is true that not every search and seizure claim will be subject

to the doctrines cited by the Court, *e.g.*, harmless error, it is apparent that this Court intended to establish an across-the-board exception for all unreasonable search cases, not the case-by-case application employed by the court of appeals. Anything less will involve the district courts in a premature evaluation of the validity of the underlying claim, *i.e.*, precisely the sort of analysis that the general rule and its exception were intended to forestall.

In addition, the court of appeals' interpretation will bifurcate unreasonable search cases into two categories and will impose new burdens on both potential plaintiffs and defendants, as well as the district courts. The court of appeals' decision will require a potential plaintiff to surmise, within the limitation period running from the date of the search and seizure, into which category his claims fall. The plaintiff will have to assess whether the facts of his Fourth Amendment claim allow him to wait for a possible reversal of his conviction before proceeding, or require him to institute suit during the period running from the search and seizure because of the risk that his action may later be held to be untimely if his conviction is reversed after the limitation period has passed. In those cases in which the plaintiffs choose to wait for possible reversals, police officers will not know whether the applicable limitation period has run and, therefore, that there is no need to preserve evidence relating to the search and seizure, or whether they must continue to linger, waiting for a process server who may never come.

Moreover, such a bifurcated system will result in additional litigation as many plaintiffs will commence initial protective actions to obtain judicial determinations that their claims have not yet accrued. In contrast, a plain and simple rule that all search and seizure cases accrue when the plaintiff has knowledge of the factual basis for his claim will put both plaintiffs and police officers on clear notice of the status of such claims and avoid the various burdens which will be imposed on the

parties and the district courts as a result of the court of appeals' decision.

CONCLUSION

For the reasons set forth herein, the petition for a writ of certiorari should be granted.

Dated: New York, New York
May 10, 1995

Respectfully submitted,

DENNIS C. VACCO
Attorney General of the
State of New York
Attorney for Petitioner
120 Broadway
New York, New York 10271
(212) 416-8657

VICTORIA A. GRAFFEO
Solicitor General

LILLIAN Z. COHEN*
FREDERIC L. LIEBERMAN
Assistant Attorneys General

of Counsel

* Counsel of Record

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 653—August Term 1993

Submitted on January 10, 1995 after Remand Decided: February 9, 1995

Docket No. 93-7664

DARRYL J. WOODS,

Plaintiff-Appellant,

—against—

JOSEPH CANDELA,

Defendant-Appellee.

Before:

LUMBARD, KEARSE, and JACOBS,
Circuit Judges.

Appeal from a judgment of the United States District Court for the Southern District of New York, Goettel, *J.*, dismissing cause of action under 42 U.S.C. § 1983 as time-barred. Remand from the Supreme Court for reconsideration in light of *Heck v. Humphrey*, 114 S. Ct. 2364 (1994). Upon reconsideration, held that the claim was not time-barred.

Reversed and remanded.

ROBERT N. ISSEKS, Goshen, New York (Alex Smith, Goshen, New York, of counsel), *for Plaintiff-Appellant.*

FREDERIC L. LIEBERMAN, Assistant Attorney General of the State of New York, New York, New York (Dennis C. Vacco, Attorney General of the State of New York, Albany, New York), of counsel *for Defendant-Appellee.*

PER CURIAM:

This case has been remanded to us by the Supreme Court. *Woods v. Candela*, 115 S. Ct. 44 (1994). We previously affirmed the district court's dismissal of a cause of action under 42 U.S.C. § 1983, raising claims founded on Fourth and Fifth Amendment violations, as barred by New York's three-year statute of limitations. *Woods v. Candela*, 13 F.3d 574 (2d Cir. 1994). The Supreme Court vacated that decision and remanded for reconsideration in light of *Heck v. Humphrey*, 114 S. Ct. 2364 (1994), an opinion rendered after our decision.

In *Heck*, the Supreme Court held that "a § 1983 cause of action for damages attributable to an unconstitutional

conviction or sentence does not accrue until the conviction or sentence has been invalidated." *Heck*, 114 S. Ct. at 2374. The Court exempted from this rule actions that "even if successful, would not *necessarily* imply that the plaintiff's conviction was unlawful," *id.* at 2372 n.7 (emphasis in original), such as an action founded on an unlawful search whose illegality would not affect the validity of the conviction.

In the present case, the Appellate Division reversed Woods's conviction and dismissed the indictment after ruling that his suppression motion should have been granted, due to defendant Candela's lack of a reasonable suspicion on which to detain and question Woods and thereafter search his vehicle. *People v. Woods*, 189 A.D.2d 838, 841-43, 592 N.Y.S.2d 748, 750-52 (2d Dep't 1993). As made evident by that decision, Woods's present Fourth and Fifth Amendment claims, which rest on the very same grounds, necessarily imply that his conviction was unlawful, and thus could not have been raised prior to the Appellate Division's reversal of his conviction on January 19, 1993. Therefore, under *Heck*, Woods's § 1983 cause of action for damages arising from Fourth and Fifth Amendment violations did not accrue before that date. Consequently, Woods's suit was not barred by the statute of limitations.

Reversed and remanded.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 653—August Term, 1993

Argued: December 2, 1993 Decided: January 6, 1994

Docket No. 93-7664

DARRYL J. WOODS,

Plaintiff-Appellant,

—against—

JOSEPH CANDELA,

Defendant-Appellee.

Before:

LUMBARD, KEARSE, and JACOBS,
Circuit Judges.

Appeal from a judgment of the United States District Court for the Southern District of New York, Goettel, *J.*, dismissing plaintiff-appellant's complaint as barred by the statute of limitations.

Affirmed.

ROBERT N. ISSEKS, Goshen, New York (Alex Smith, Goshen, New York, of counsel), *for Plaintiff-Appellant.*

FREDERIC L. LIEBERMAN, Assistant Attorney General of the State of New York, New York, New York (Robert Abrams, Attorney General of the State of New York, Albany, New York, of counsel), *for Defendant-Appellee.*

LUMBARD, *Circuit Judge*:

Plaintiff-appellant Darryl J. Woods appeals from a judgment of the District Court for the Southern District of New York, Goettel, *Judge*, dismissing his complaint as barred by the statute of limitations. On appeal, Woods argues that the district court improperly (1) determined the date his cause of action accrued and (2) failed to toll the statute of limitations. We affirm.

We assume the facts to be as set forth in the complaint. On September 25, 1989, defendant-appellee Joseph Candela, a New York State trooper, saw Woods driving a blue vehicle with tinted windows on South William Street in Newburgh, New York. A vehicle with a similar description had been seen near the scene of two recent robberies and a recent larceny. Candela stopped Woods's car and asked Woods if he had any weapons in the car. Woods replied that he kept a nightstick under the seat. Candela then searched the vehicle, finding several items that matched the description of articles used in the robberies: an air rifle, a green cap, and a black cloth with two holes cut in it. Candela arrested Woods, searched him, handcuffed him, and advised him of his *Miranda* rights.

Shortly after Woods's arrest in 1989, the Orange County Grand Jury indicted him for first degree robbery and criminal possession of a weapon. Woods filed an omnibus motion

seeking, *inter alia*, an order suppressing the evidence found in the vehicle and the statements made to the police on the day of his arrest. The county court denied these motions, and the prosecution used the seized evidence at trial. A jury found Woods guilty, and on November 15, 1990 the court sentenced him to 12 $^1/_2$ to 25 years imprisonment.

Woods appealed his conviction to the Appellate Division, Second Department. On January 19, 1993, that court reversed the conviction and dismissed the indictment, holding that the county court erred in denying Woods's motion to suppress. The Appellate Division found that Candela's stop of Woods's car was justifiable because of Woods's traffic violation (driving with excessively tinted windows), but that Candela did not have reasonable suspicion to detain and question Woods.

On May 6, 1993, Woods commenced this action under 42 U.S.C. § 1983 against Candela in the District Court for the Southern District of New York. Woods alleged that Candela violated his Fourth Amendment rights to be free from unreasonable searches and arrests without probable cause; his Fifth Amendment right to remain silent; and his Fourteenth Amendment rights to due process, equal protection, and substantive due process. Candela moved to dismiss on the grounds that: (1) the Fourth and Fifth Amendment claims were barred by the applicable statute of limitations, (2) the Fourteenth Amendment claims were barred by Candela's absolute immunity, and (3) the complaint failed to state a cause of action for malicious prosecution. Woods conceded the second and third points, and agreed to drop all claims except for those based on Candela's alleged violation of his Fourth and Fifth Amendment rights. The district court then dismissed those claims as barred by the statute of limitations.

New York's three year statute of limitations governs this action. *See Owens v. Okure*, 488 U.S. 235, 251 (1989); New York Civ. Prac. L. & R. 214(5) (McKinney 1990). Since Woods commenced this action on May 6, 1993, it is time

barred unless (1) it accrued after May 5, 1990, or (2) the statute of limitations was tolled.

Accrual of the Cause of Action

Federal law governs the question of when this claim accrued. *Morse v. University of Vt.*, 973 F.2d 122, 125 (2d Cir. 1992). Generally, a cause of action accrues when the plaintiff knows or should know of the injury that is the basis of the cause of action. *Singleton v. City of New York*, 632 F.2d 185, 191 (2d Cir. 1980), *cert. denied*, 450 U.S. 920 (1981). Woods's alleged injuries occurred, and Woods gained knowledge of them, when Candela conducted the search, arrest and questioning; therefore, the cause of action accrued on September 25, 1989. *Day v. Morgenthau*, 909 F.2d 75, 79 (2d Cir. 1990) (opinion on petition for rehearing).

Woods argues that the cause of action did not accrue until the state appellate court vacated his conviction. The county court had previously found that Candela did not violate Woods's constitutional rights. Under the doctrine of collateral estoppel, this ruling barred Woods from claiming in another action that his rights had been violated. Therefore, Woods argues, he "could first have *successfully* maintained a suit based on that cause of action" when the Appellate Division reversed his conviction on January 19, 1993, and the cause of action accrued on that date. *Santos v. District Council*, 619 F.2d 963, 968-69 (2d Cir. 1980) (quoting *Bell v. Aerodex, Inc.*, 473 F.2d 869, 873 (5th Cir. 1973)) (emphasis added).

Woods relies on *Triplett v. Azordegan*, 478 F. Supp. 872 (N.D. Iowa 1977), in support of his position. In that case, the plaintiff, Triplett, was tried in state court for murder. At trial, he argued that his confession was inadmissible because he was drugged when he confessed. The trial court disagreed, and Triplett was convicted. He spent the next 17 years in prison until the state court ordered him released on the ground that his confession was involuntary. Triplett then brought a § 1983 action in federal court, alleging that his constitutional rights had been violated.

The District Court for the Northern District of Iowa held that the plaintiff's cause of action was not time barred because it did not "ripen" until the state court overturned the conviction. The court noted that the state trial court's decision would have had a preclusive effect in a § 1983 action, and the plaintiff was not required to "pursue a technically possible, but at the time frivolous suit." 478 F. Supp. at 875.

Woods's reliance on *Triplett* is misplaced, as that case is at odds with the established law of this circuit, as expressed in *Mack v. Varelas*, 835 F.2d 995 (2d Cir. 1987). In that case, the plaintiff, Mack, was tried for robbery in state court. At trial, Mack asked the state to produce a witness who was incarcerated. When the sheriff's office failed to produce the witness, the court refused a continuance, holding that Mack's request was untimely and the witness's testimony was unlikely to be helpful. Mack appealed his conviction to the state appellate court, and also filed a § 1983 action in federal court. The federal district court dismissed the § 1983 action, holding that it could not hear the case until the state proceedings were complete.

On appeal, we agreed that the district court could not adjudicate the claim while the state proceedings were pending because of their potential outcome-determinative effect. *Id.* at 999. However, we reversed because the district court should have stayed, not dismissed, the action. We reasoned that dismissal would have been appropriate if the claim had not accrued; however, the claim accrued on the date of the alleged violation of the plaintiff's rights. Moreover, we noted that the statute of limitations had begun to run, implying that if the dismissal were upheld, the statute of limitations could have prevented Mack from re-commencing the action after the criminal proceedings were complete.

Woods argues that *Mack* is not controlling. The question of whether Mack's rights were violated was not litigated in the state trial court; therefore, when Mack initiated his § 1983 action, there was no state court decision that would have collaterally estopped him from claiming a constitutional

violation. In contrast, until January 19, 1993, there was an adverse state court decision that would have estopped Woods from asserting that his rights had been violated. Woods therefore submits that unlike Mack he should not have been required to commence his action until the state appeal was decided. We disagree.

Woods's fear of the preclusive effect of the state trial court decision is unfounded. *Mack* requires federal courts to stay rather than dismiss § 1983 actions while relevant state proceedings are pending. Therefore, had Woods timely filed his action, it would have been treated the same as Mack's action: neither could have been dismissed while the appeal was pending, but both could have been dismissed later if the state appellate court ultimately found that there was no constitutional violation. Consequently, the adverse ruling in the state court did not present an obstacle to Woods's claim, and does not provide a basis for departing from *Mack*.

We therefore hold that the cause of action accrued on September 25, 1989, and was time barred unless the statute of limitations was tolled.

Tolling the Statute of Limitations

New York's tolling provisions govern the tolling of the statute of limitations. *See Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 463-64 (1975). However, "considerations of state law may be displaced where their application would be inconsistent with the federal policy underlying the cause of action under consideration." *Id.* at 465. Woods concedes that no New York tolling provision applies here, but argues that application of the statute of limitations would frustrate the policies underlying § 1983.

The Supreme Court has identified deterrence and compensation as two of the principal policies underlying 42 U.S.C. § 1983. *Board of Regents v. Tomanio*, 446 U.S. 488 (1980). Woods contends that the cause of action should be tolled to further these goals. However, neither deterrence nor compensation is "significantly affected by this rule of limi-

tations since plaintiffs can still readily enforce their claims, thereby recovering compensation and fostering deterrence, simply by commencing their actions within three years." *Id.* The *Mack* requirement that federal courts stay § 1983 actions until the completion of state proceedings protects plaintiffs by allowing them to commence their actions without fearing that the lower state court decision will bar recovery; at the same time, the requirement that plaintiffs file within three years protects defendants by putting them on notice of the claim and allowing them to preserve evidence for their defense.

Affirmed.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

93 Civ. 3051 (GLG)

DARRYL J. WOODS

Plaintiff,

—against—

JOSEPH CANDELA

Defendant.

OPINION

I. STATEMENT OF FACTS

This is a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendant Joseph Candela moves to dismiss this action, brought under 42 U.S.C. § 1983 by Plaintiff Darryl J. Woods on the grounds that Plaintiff's claims are untimely and barred by the statute of limitations.

For the purposes of a motion to dismiss, the facts are assumed to be as set forth in the complaint.

On September 25, 1989, Defendant, who is a New York state trooper, stopped Plaintiff's vehicle because it matched a general description of a vehicle that had been spotted at the scene of several recent robberies. Defendant asked Plaintiff if there were any weapons in the car and Plaintiff replied that he had a nightstick under the driver's seat. Defendant testified during the subsequent criminal trial that he asked if there were any other weapons in the car and Plaintiff replied that

there were none and offered to allow Defendant to search the entire vehicle.

Defendant testified that Plaintiff agreed to allow him to search the trunk and opened the trunk for him.

Defendant then looked again at the rear seat area, where he observed an air rifle, a green cap and a black piece of cloth with two holes. Defendant testified the Plaintiff claimed ownership of the rifle. These articles matched a description of articles used by a perpetrator of recent armed robberies in the area.

Defendant advised Plaintiff that he was under arrest for criminal possession of the nightstick. Plaintiff denied his involvement in any robberies. At the police station, Plaintiff signed a form consenting to the previous search of his vehicle and to an additional search of the vehicle at the police station. Plaintiff was issued summonses for driving without a license and for having excessively tinted windows in his vehicle.

The evidenced seized by Defendant was presented at a Grand Jury hearing in September or October of 1989 in which the Grand Jury charged Plaintiff with the crimes of robbery in the first degree and criminal possession of a weapon in the fourth degree.

After Plaintiff's arraignment, Plaintiff sought to suppress the evidence found in Plaintiff's vehicle as well as Plaintiff's statements to the police. The County Court denied these motions.

Plaintiff was tried by a jury. During the trial, the evidence seized from Plaintiff's vehicle by Defendant as well as Plaintiff's statements to the police were received in evidence. Plaintiff was found guilty and sentenced on November 15, 1990 to 12 $^{1}/_{2}$ to 25 years imprisonment.

Plaintiff appealed and on January 19, 1993, the Appellate Division, Second Department reversed, dismissing the indictment against Plaintiff. In its decision, the Appellate Division found that Plaintiff's motion to suppress the evidence found in his vehicle should have been granted. Although

the stop was justifiable, the Appellate Division found that the circumstances did not provide Defendant with reasonable suspicion to detain and question Plaintiff and, therefore, Defendant's inquiry as to whether Plaintiff had any weapons in the vehicle was impermissible. Furthermore, they held that the items recovered during the search should have been suppressed, since a stop for a traffic offense will not justify a search of the motorist or of the vehicle unless there are reasonable grounds for believing the motorist guilty of a crime or if the officer has a reasonable, articulable basis to fear for his own safety. The Appellate Division found that Defendant had no such reasonable suspicion nor did he express any basis to fear for his safety.

Plaintiff was incarcerated for a period of two years and nine months.

On May 6, 1993, Plaintiff brought claims in federal court under § 1983 for violations of his rights under the Fourth, Fifth and Fourteenth Amendments for false arrest and malicious prosecution. Upon Defendants motion to dismiss, Plaintiff has dropped all claims except for violations of his rights under the Fourth and Fifth Amendments.

II. DISCUSSION

Defendant contends that Plaintiff's claims are barred by the governing statute of limitations. The statute of limitations applicable to civil rights claims under 42 U.S.C. § 1983 is that provided by the forum state for general or residual personal injury claims. *Owens v. Okure*, 488 U.S. 235, 251 (1989). New York Civil Practice Law and Rules states that such claims are subject to a three year statute of limitations. New York Civil Practice Law and Rules § 214(5).

In order to decide whether the statute of limitations has run prior to the commencement of an action, the court must determine when the cause of action accrued and whether the running of the statute was subject to any toll.

A. ACCRUAL OF THE CLAIM

Accrual with respect to claims brought pursuant to § 1983 is a matter of federal law. *Morse v. University of Vermont*, 973 F.2d 122, 125 (2d Cir. 1992). The general rule in the Second Circuit is that a cause of action accrues when the plaintiff knows or has reason to know of the injury that is the basis of his action. *Singleton v. City of New York*, 632 F.2d 185, 192 (2d Cir. 1980), *cert. denied*, 450 U.S. 920 (1981). Defendant contends that the claim accrued on September 25, 1989. He notes that all his actions with respect to the alleged unreasonable search and seizure, the alleged arrest without probable cause, and the alleged denial of Plaintiff's right to remain silent occurred on that day. According to Defendant, Plaintiff's continuing incarceration does not imply a continuing tort. "The continuing violation doctrine may not be based on the continuing effects of earlier unlawful conduct." *Day v. Moscow*, 769 F.Supp. 472 (S.D.N.Y. 1991). See also, *Delaware State College v. Ricks*, 449 U.S. 250, 257-58 (1980). Plaintiff alleges no continuing unlawful acts, only continual ill effects from the original Fourth and Fifth Amendment violations which occurred on September 25, 1989.

The Second Circuit dealt with a similar situation in *Mack v. Varelas*, 835 F.2d 995 (2nd Cir. 1987). In that case, Plaintiff Mack was not allowed to produce an incarcerated witness for his defense, allegedly in violation of his Sixth Amendment rights. Mack's motion for a continuance was denied and Mack was convicted of first and second degree robbery. Mack's appeal was pending when he filed his § 1983 claim. His claim was deemed to have accrued on the date he was incarcerated allegedly in violation of his rights. Applying this reasoning to the current case, Plaintiff's action accrued on the date when his Fourth and Fifth Amendment rights were allegedly violated, September 25, 1989, the date of his arrest. If this action accrued on September 25, 1989, the three year statute of limitations would have run and Plaintiff's claims would be untimely and therefore barred.

A case more favorable to Plaintiff is *Triplett v. Azordegan*, 478 F.Supp. 872 (N.D. Iowa 1977). In that case, Plaintiff Triplett had been convicted for murder in 1954 and served 17 years in jail before a judicial determination that Plaintiff was drugged when he made the confession upon which the conviction had been based—an issue raised both at trial and in post-trial motions. Upon his release in 1972, Plaintiff brought a § 1983 suit which the defendants sought to dismiss as time-barred. In that case, as in this one, the movant claimed that plaintiff knew all the operative facts at the time of the original incident and should have sued then. *Id.* at 874. The *Triplett* court, however, rejected that reasoning, noting that:

> in a § 1983 action it is necessary to first define the constitutional wrong on which the claim is based. Here the Plymouth County District Court did just that in October of 1972.

Id. at 875.

Despite the *Triplett* court's reasoning, the Second Circuit's analysis of the accrual of the claim in *Mack*, forecloses the similar argument in this case that the claim accrued on the date of the Appellate Division's reversal.

B. PRECLUSION OF PLAINTIFF'S § 1983 CLAIM DUE TO THE FIRST CRIMINAL CONVICTION AND ITS EFFECT ON THE RUNNING OF THE STATUTE OF LIMITATIONS

At the initial criminal trial, when the county court denied Plaintiff's motion to suppress the evidence from the search at trial as a violation of his Fourth and Fifth Amendment Rights, Plaintiff no longer had any legal ground on which to bring his § 1983 claim based on the alleged Fourth and Fifth Amendment violations. "There is no question that state court judgments can have collateral estoppel effect in subsequent section 1983 proceedings." *Anderson v. City of New York*, 611 F.Supp. 481, 486 (S.D.N.Y. 1985) (citing *Migra v. Warren City School District Board*, 465 U.S. 75 (1984)). *See also*,

Liner v. Ward, 754 F.Supp. 32 (S.D.N.Y 1991). "The standard for determining if litigation of a question in a civil suit is barred by a prior criminal trial is whether the question was 'distinctly put in issue and directly determined' in the criminal prosecution." *Kauffman v. Moss*, 420 F.2d 1270, 1274 (3d Cir. 1970); *See also*, *McNally v. Pulitzer Publishing Co.*, 532 F.2d 69, 76 (8th Cir. 1976). "In the case of a criminal conviction based on a jury verdict of guilty, issues which were essential to the verdict must be regarded as having been determined by the judgment" *Emich Motors Corp. v. General Motors Corp.*, 340 U.S. 558, 569; *Kauffman*, 420 F.2d at 1274. In the present case, Plaintiff raised the issue that the police action was improper in a motion to suppress. The motion was denied. The seized evidence must be considered essential to the verdict as it was the basis for the entire case against Plaintiff. A § 1983 claim based on the issue of suppression of the disputed evidence would have been governed by claim preclusion and, for all practical purposes, foreclosed by Plaintiff's criminal conviction pending the outcome of the appeal.

While the Second Circuit held in *Mack v. Ravelas* that Plaintiff needed to bring his § 1983 claim within the statute of limitations period accruing from the original constitutional violation, they noted that final disposition of the claim would have to wait until the conclusion of state court proceedings. "Our determination that the adjudication should not proceed until the state court criminal proceedings have been concluded is based on the prudential consideration that those proceedings may suffice to establish that Mack's incarceration does not constitute injury." *Mack*, 835 F.2d at 999. They concluded that "the action should be stayed, rather than dismissed, pending termination of the state court criminal proceedings against Mack." *Id.* at 1000.[1] This was true even though the issue on appeal in *Mack* was not identical to the issue underlying the § 1983 claim. The *Mack* court

---

[1] This reasoning has been expressly followed by the Ninth Circuit in *Young v. Kenny*, 907 F.2d 874, 878.

commented: "Nor would an affirmance of Mack's conviction necessarily negate the basis for his claim for damages, for . . . it is likely that the state appellate court will not reach the question of the propriety of the action or inaction by the sheriffs." *id.* at 998.

In the present case, the issues on appeal in the Appellate Division were identical to the issues which underlie Plaintiff's § 1983 claim. The resolution of the criminal proceedings would certainly provide an answer as to whether or not Plaintiff's Fourth and/or Fifth Amendment rights had been violated. If the county court's determination of the propriety of the police action were allowed to stand, Plaintiff's claim was precluded. Only if the Appellate Division determined that a constitutional violation had indeed taken place would Plaintiff's claim be legally viable.

The *Triplett* court, facing the same issue, noted that "It is almost too evident to warrant comment that plaintiff, having been convicted of murder by virtue of a confession which in 1955 was deemed legal and admissible, could not have, at that time, pursued a § 1983 claim." *Triplett,* 478 F.Supp at 875. That court recognized that "[t]o hold that a plaintiff needed to ignore the criminal proceedings and immediately sue under § 1983 would mean that plaintiff would have had to pursue a technically possible, but at the time frivolous suit. To so argue is to read Kafka into law." *Id.*

In circumstances in which the state appellate proceedings will definitely decide the issue underlying a possible § 1983 suit, the policy outlined in *Mack* of requiring the federal court to stay the pending § 1983 suit does not apply with the same force. To require the criminal defendant to bring a civil § 1983 suit before a definitive determination of the issue in state court in order to meet statute of limitations requirements and then require the federal court to stay the action pending the outcome of the state criminal proceedings will lead to a lot of unnecessary filing of claims. Alert criminal defense lawyers will file § 1983 claims as a matter of course, to preserve future § 1983 actions on the chance that the appeals

process eventually lasts longer than the pertinent statute of limitations period. Many of these claims may eventually prove groundless where a conviction is upheld on appeal. Following *Mack*, federal courts would not be able to dispose of these claims until the end of all criminal proceedings in state court and many stayed, groundless § 1983 claims would ferment in federal court awaiting state appellate outcomes.[2]

Although the persuasive reasoning of the *Triplett* court would avoid these problems, decisions of the Second Circuit and the weight of case law from other circuits require us to decide differently.[3]

C. TOLLING OF THE STATUTE OF LIMITATIONS

If, in similar situations, the statute of limitations tolled during plaintiff's incarceration, plaintiffs would be able to maintain potentially valid § 1983 claims without forcing criminal defendants and federal courts to go through the elaborate dance described above in order to keep them alive. Tolling of the statute of limitations can occur as a result of the federal

---

[2] As a solution to this problem, we suggest tolling the statute of limitations for § 1983 claims from the date of a criminal conviction to the date of completion of appellate proceedings if the criminal defendant's § 1983 claim would be collaterally estopped by the original state court conviction. Of course, if the issue in the state appellate court is not one that would, if successful, allow the criminal defendant to pursue an otherwise collaterally estopped § 1983 claim, then the current discussion would not be applicable and no reason would exist to toll the statute of limitations.

[3] *See Strung v. Anderson*, 452 F.2d 632 (9th Cir. 1971) which rejected the appellants' argument that their § 1983 action did not accrue until the validity of the contested search and seizure had been adjudicated in the state court criminal proceeding because the § 1983 claim is unaffected by the availability of remedies in a state court to test a constitutional right. *Id.* at 633. *See also*, *Emory v. Logan*, 801 F.Supp. 899 (D.Mass. 1992) which assumed, without deciding, that even if "plaintiff's criminal conviction would have precluded him from challenging the unlawfulness of the arrest in a subsequent civil rights action, the fact of such estoppel does not operate to toll the statute of limitations for the § 1983 action." *Id.* at 902.

court tolling the limitations period or as a result of a state provision for tolling the limitations period.

1. *Power of Federal Courts to toll state statutes of limitations*

Federal courts do have the power to toll statutes of limitations borrowed from state law, but only where application of the statute of limitations would frustrate the policy underlying the federal cause of action. *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 465 (1975); *Jewell v. County of Nassau*, 917 F.2d 738, 740 (2d Cir. 1990). The Supreme Court has identified the principal policies embodied in § 1983 as deterrence, compensation and uniformity. *Board of Regents v. Tomanio*, 446 U.S. 478, 488-89 (1980). In the present case, neither deterrence nor compensation is "significantly affected by this rule of limitations since plaintiffs can still readily enforce their claims, thereby recovering compensation and fostering deterrence, simply by commencing their actions within three years." *Id.* at 488. Furthermore, the need for uniformity has not been held to warrant the displacement of state statutes of limitations for civil rights actions. *Id.* at 489. As a result, this court does not have the power to toll the statute of limitations in order to allow Plaintiff's § 1983 claim.

2. *Pendent state proceedings not recognized as a reason to toll the statute of limitations*

The *exclusive* method to maintain a federal claim that may be affected by pending New York State proceedings is to file within the limitations period whereupon the federal court will be required to stay it. "Where a plaintiff wishes or is required to pursue his claims in succession, rather than concurrently, in the absence of the parties' agreement made to waive the limitary period before it had expired, a judicial stay of the pending suit, rather than dismissal, albeit expressed to be without prejudice, is the only means by which the bar of limitations may be avoided." *Tomanio*, 446 U.S. at 486-87; *Jewell*, 917 F.2d at 740-41.

In *Tomanio,* the Court went on to note that:

> [T]here is no question that respondent's § 1983 action was "separate and independent" from the state judicial remedy pursued in state court. This Court has not interpreted § 1983 to require a litigant to pursue state judicial remedies prior to commencing an action under this section. . . . Thus the very independence of § 1983 reveals that the New York rule precluding tolling in the circumstances of this case is not "inconsistent" with the provisions of § 1983. (footnote omitted)

Tomanio, 446 U.S. at 491. The Court treats a claim under § 1983 as an independent federal remedy and any state policy of repose which does not allow a plaintiff to litigate such alternative claims in succession, without risk of a time bar, is not "inconsistent". *Id.* at 489.

3. *New York state provisions for tolling the statute of limitations*

If New York law provides for tolling in this circumstance, then such a toll would be recognized by the federal court which recognizes not only the state limitations period, but also any state provisions for tolling of the limitations period. *See, e.g., Railway Express*, 421 U.S. at 463-64.

In *Roldan v. Allstate Insurance Co.*, 544 N.Y.S.2d 359 (2d Dep't 1989), the plaintiff sued the defendant insurance company to pay for a default judgment that was entered against plaintiff in a 1979 tort claim. The defendant contended the suit was time-barred because it was filed in 1986 more than a year past the governing statute of limitations. However, in that case, the original judgment that was the basis of the suit had been vacated in 1982 and then reinstated in 1986. The court in *Roldan* held that under the facts of the case:

> the running of the Statute of Limitations with respect to the plaintiff's cause of action . . . was suspended as soon as the Supreme Court, by erroneously granting Allstate's motion to vacate the judgment in the underlying

> action, in effect extinguished the plaintiff's causes of action at Allstate's behest. The running of the Statute of Limitations remained suspended until this court, in February 1986 reversed the order vacating the judgment in the underlying action, thereby reviving the plaintiff's causes of action. Because of this toll, we conclude that the plaintiff's causes of action . . . are not time-barred.

Roldan, 544 N.Y.S.2d at 368. Similarly, in the present case, the county court's holding in 1990 that the police conduct was proper effectively extinguished Plaintiff's § 1983 claim based on damages suffered as a result of the improper police conduct. The *Roldan* court emphasized, however, that the earlier judgment had been vacated on the defendant's motion and that the defendant "must bear the responsibility exclusively for the order which deprived the plaintiff of her ability to assert her assigned's case.

Furthermore, the Fourth Department has clearly stated that a "subsequent court decision which affects a party's legal rights does not revive a cause of action which is not timely instituted, or extend the time within which to bring the action or proceeding." *Williamson v. Fermoile*, 298 N.Y.S.2d 557, 560 (4th Dep't 1969).

The current backlog in the New York Appellate Divisions, most notably in the Second Department, exacerbates this problem as it occurs in New York. Many state appellate decisions, like the one in the present case, are not rendered until the statute of limitations period for § 1983 actions has expired.

Nonetheless, the reasoning of the Third Circuit in *Sandutch v. Muroski*, 684 F.2d 252 (3d Cir. 1982), is compatible with the reasoning employed by this circuit. In that case, the plaintiff was wrongly convicted on the basis of fraudulent testimony secured via a conspiracy by public officials. His conviction was reversed approximately three years later, whereupon he brought a civil rights claim under 28 U.S.C. § 1291.

The court held that the statute of limitations began running from the point at which plaintiff had reason to know of the alleged conspiracy to secure false testimony. Applied to the present case, Plaintiff's cause of action accrued on the date had reason to know he was subject to the improper police conduct, September 25, 1989, the date of his arrest.

The *Sandutch* court also held, contrary to the holding in *Triplett,* 478 F.Supp at 875-76, that continuing incarceration is not a continuing tort because the plaintiff did not allege any unlawful acts within the limitations period, only continued ill effects from the initial violation of his rights. *Sandutch*, 684 F.2d at 254. This is identical to the present case where the only alleged unlawful conduct occurred before the conviction.

Lastly, the *Sandutch* court held that the limitations period had not been tolled by Sandutch's incarceration. *Id.* Although this is a question of Pennsylvania law and therefore not instructive in the present case, New York law leads us to the same result. New York Civil Rights Law § 79 states that "A sentence of imprisonment in a state correctional institution for any term less than for life . . . shall not be deemed to suspend the right or capacity of any person so sentenced to commence and prosecute an action or proceeding in any court. . . ."[4]

The weight of case law, including the Second Circuit's decision in *Mack*, leads us to only one conclusion: Plaintiff's § 1983 claims for false arrest and malicious prosecution accrued at his arrest on September 25, 1989 when the evidence was improperly seized and the statute of limitations did not toll.

IV. CONCLUSION

The statute of limitations governing claims pursuant to 42 U.S.C. § 1983 in New York is three years. Because the claim

---

[4] Until 1973, imprisonment was a disability which would toll the statute of limitations under NY CRL § 79 and under New York Civil Practice Law and Rules § 208, but the state legislature specifically amended both rules to erase that provision.

accrued on September 25, 1989 but was not filed until May 1993, and no federal or New York State provision for tolling the statute of limitations pertaining to § 1983 claims applies to the circumstances of this case, Plaintiff's claim for relief is time-barred and defendant's motion to dismiss under Rule 12(b)(6) is granted in its entirety. The Clerk shall enter judgment for the Defendant.

SO ORDERED.

Dated: White Plains, N.Y.
June 25, 1993

/s/ GERARD L. GOETTEL
Gerard L. Goettel
U.S.D.J.

No. 94-1856

FILED
JUN 7 1995
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1994

JOSEPH CANDELA,

Petitioner,

against

DARRYL J. WOODS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

ROBERT N. ISSEKS
Counsel of Record
40 Park Place
P.O. Box 247
Goshen, NY 10924
(914) 294-7292

Attorney for Respondent

Of Counsel:
ALEX SMITH

THE REPORTER CO., INC.- Walton, NY 13856 - 800-252-7181
Syracuse Office, University Building, Syracuse, NY 13202 - 315-426-1235
NYC Office - 30 Vesey St., New York, NY 10007 - 212-732-6978 - 800-800-4264
(1098 – 1995)
Printed on Recycled Paper

BEST AVAILABLE COPY

1098

QUESTION PRESENTED

Does the decision of this Court in *Heck v Humphrey* require district courts, in determining the accrual date of Section 1983 actions, to evaluate on a case-by-case basis whether the success of the federal claims will necessarily invalidate any outstanding state criminal conviction?

Table of Contents

Question Presented i

Table of Authorities iii

Summary of the Argument 1

Statement of the Case 1

REASONS FOR DENYING THE WRIT

The Second Circuit's decision correctly applied the principles set forth in *Heck v Humphrey* 4

Conclusion 6

TABLE OF AUTHORITIES

CASES:	Pages
Heck v Humphrey, 129 L Ed 2d 383 (1994)	*passim*
People v Woods, 189 AD2d 838 (2nd Dept. 1993)	2
Woods v Candela, 825 F. Supp. 43 (S.D.N.Y. 1993) ...	3
Woods v Candela, 13 F.3d 574 (2nd Cir. 1994)	3
Woods v Candela, 47 F.3d 545 (2nd Cir. 1995)	3

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Summary of the Argument

The Court of Appeals answered the question presented in the affirmative. The reasoning of the Second Circuit is a correct application of this Court's holding in *Heck v Humphrey,* 129 L Ed 2d 383 (1994).

Statement of the Case

On September 25, 1989, while on patrol in the City of Newburgh, New York, petitioner, a New York state trooper, stopped respondent's vehicle. A vehicle with a similar description had been seen near the scene of two recent robberies and a recent larceny. Other than tinted windows, there was nothing wrong with respondent's vehicle and petitioner had no reason to believe that either respondent or his passenger had committed or were about to commit a crime.

Petitioner asked respondent if there were any weapons in the vehicle and respondent replied that he had a nightstick under the seat. Petitioner searched the vehicle and found several items that matched the description of articles used in the robberies, an air rifle, a green cap, and a black cloth with two holes cut in it. Petitioner arrested respondent and shortly thereafter the items seized were offered to an Orange County Grand Jury and an indictment was handed up charging respondent with the crimes of robbery in the first degree and criminal possession of a weapon in the fourth degree.

Respondent filed an omnibus motion which sought an order suppressing the physical evidence found in respondent's vehicle as well as respondent's statements made to the police. The Orange County Court held a hearing on the motion and

determined that respondent's constitutional rights had not been violated and denied suppression. The items and respondent's statement were subsequently received in evidence at respondent's jury trial and respondent was found guilty as charged. On November 15, 1990, respondent was sentenced to an indeterminate term of imprisonment of 12½ to 25 years.

Respondent appealed from the judgment of his conviction to the Supreme Court of the State of New York, Appellate Division, Second Department, and on January 19, 1993, that court reversed the judgment of conviction and dismissed the indictment. *People v Woods,* 189 AD2d 838 (2nd Dept. 1993). The Appellate Division found that petitioner did not have reasonable suspicion that the occupants of respondent's vehicle were involved in criminal activity, that the intrusiveness of petitioner's conduct exceeded that which is permissible during a normal traffic stop, that petitioner had no justification for detaining respondent to question him about matters unrelated to the traffic violation, and that the People failed to meet their burden of proving the voluntariness of respondent's statement and purported oral consent to the search of the vehicle.

In his complaint against petitioner filed in the District Court on May 6, 1993, respondent claimed, *inter alia,* that petitioner violated his Fourth Amendment right to be free from unreasonable searches and seizures without probable cause and his Fifth Amendment right remain silent. Petitioner moved to dismiss the claims pursuant to F.R.C.P. Rule 12 (b) (6) on the ground that they were untimely and barred by the three-year statute of limitations. In opposition to the motion, respondent argued that although the police conduct which gave rise to the Fourth and Fifth Amendment violations occurred in September, 1989, his civil rights claims should not be barred since the criminal court's denial of suppression was not reversed until

January, 1993. The District Court granted petitioner's motion in an opinion dated June 25, 1993. *See* Appendix C to Petition, p 11a.[1] By Decision dated January 6, 1994, the Court of Appeals affirmed. *See* Appendix B to Petition, p 4a.[2]

Respondent filed a petition for writ of certiorari in this Court. Subsequent to the filing of the petition, this Court decided *Heck v Humphrey,* 129 L Ed 2d 383 (1994). In *Heck,* this Court held that "a §1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated." *Heck,* 129 L Ed 2d at 396.

In October, 1994, this Court granted respondent's petition, and remanded to the Second Circuit "for further consideration in light of *Heck." Woods v Candela,* 115 S. Ct. 44 (1994).

On February 9, 1995, the Second Circuit reversed the judgment of the District Court and remanded for further proceedings. *See* Appendix A to Petition, p 1a.[3] The Court of Appeals noted that the *Heck* Court had provided an exception to the accrual rule for §1983 actions: an action based upon an allegedly unconstitutional search that "would not *necessarily* imply that the plaintiff's conviction was unlawful" would accrue without regard to the invalidation of the conviction. Appendix

---

[1]This decision was reported at *Woods v Candela,* 825 F. Supp. 43 (S.D.N.Y. 1993).

[2]This decision was reported at *Woods v Candela,* 13 F.3d 574 (2nd Cir. 1994)

[3]This decision was reported at *Woods v Candela,* 47 F.3d 546 (2nd Cir. 1995) (*per curiam)*

A, p 3a, *quoting Heck*, 129 L Ed 2d at 394 n 7. The Court of Appeals then reviewed the decision of the New York Appellate Division dismissing respondent's indictment, and determined that respondent's present constitutional claims are the same upon which the Appellate Division relied to invalidate his conviction and thus "necessarily imply that his conviction was unlawful". Appendix A, p 3a. The Second Circuit concluded that *Heck* therefore precluded respondent from bringing his action prior to the invalidation of his conviction by the Appellate Division. Appendix A, p 3a.

REASONS FOR DENYING THE WRIT

The Second Circuit's decision correctly applied the principles set forth in *Heck v Humphrey*.

In his petition to this Court, Candela argues that the decision of the Court of Appeals is in conflict with *Heck*. The determination of the Second Circuit, however, quite logically flows from application of the holding and principles of *Heck*. An even cursory reading of petitioner's argument reveals that what petitioner actually is seeking is a rehearing of *Heck* itself.

Petitioner frivolously claims that respondent's §1983 action falls within the exception provided by the *Heck* Court in footnote 7. But petitioner never explains *how* this particular illegal search did not "necessarily imply that the [respondent's] conviction was unlawful". Petitioner simply ignores the ineluctable conclusions of the New York Appellate Division and the United States Second Circuit Court of Appeals that the unconstitutionality of this search invalidated the criminal conviction—indeed, the determination that this particular search was illegal could have led to no other conclusion. Put another way, petitioner never comes to terms with the rationale underlying

Heck: if the determination in a federal cause of action that a state search was unconstitutional necessarily invalidates the conviction produced by that same search, the federal cause of action does not accrue until the conviction is overturned. Otherwise, what would have happened in this case is that a federal court would have invalidated the search *prior* to the invalidation of respondent's conviction. This is precisely the turn of events which this Court decided to prevent by its holding in *Heck*.

At page 8 of his petition, Candela contends that "it is apparent that this Court [in *Heck*] intended to establish an across-the-board exception for all unreasonable search cases, not the case-by-case application employed by the court of appeals . . . [and that] . . . [a]nything less will involve the district courts in a premature evaluation of the validity of the underlying claim". This frivolous contention simply ignores the plain language of *Heck*:

> We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a §1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal . . . A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under §1983. Thus, when a state prisoner seeks damages in a §1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful,

> will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed . . .

Heck, 129 L Ed 2d at 394. Petitioner is arguing that the Second Circuit should not have done precisely what this Court told it to do. The petition is a poorly disguised request that this Court overrule *Heck v Humphrey*.

Conclusion

For the forgoing reasons this petition for a writ of certiorari should be denied.

Dated: Goshen, New York
June 1, 1995

Respectfully submitted by

ROBERT N. ISSEKS
Counsel of Record
40 Park Place
P.O. Box 247
Goshen, NY 10924
(914) 294-7292

Attorney for Respondent

Of Counsel:
ALEX SMITH